

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOACHIM PETROLINO, a single
person,

Plaintiff,

v.

DANIEL LEONETTI AND STEVEN
SKINNER,

Defendants.

No. CV-07-0228-FVS

ORDER GRANTING DEFENDANTS'
MOTION FOR JUDGMENT AS A
MATTER OF LAW

THIS MATTER came before the Court on Defendants' Motion for Judgment as a Matter of Law. (Ct. Rec. 174). Plaintiff was represented by Gary R. Stenzel. Defendants were represented by Heather C. Yakely. This order is intended to memorialize and supplement the Court's oral ruling.

At the close of Plaintiff's case, Defendants moved for judgment as a matter of law, which the Court construed as a motion under Fed. R. Civ. P. 52(c)¹ for judgment based on partial findings in a bench trial.

¹Rule 52(c) provides: If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

1 When deciding a motion under Rule 52(c), the Court is "not
2 required to draw any inferences in favor of the non-moving party," as
3 it would be required to do when deciding a motion under Rule 56.
4 *Ritchie v. United States*, 451 F.3d 1019 (9th Cir. 2006). Instead, the
5 Court "may make findings in accordance with its own view of the
6 evidence." *Id.*

7 **FINDINGS OF FACT²**

8 The Court makes the following findings of fact:

9 1. Plaintiff is a German National, currently residing in Mead,
10 Washington.

11 2. Spokane County is a municipal corporation duly incorporated
12 under the laws of Washington State and the Spokane County Sheriff's
13 Department is a political sub-division of the State of Washington.

14 3. Individually named Defendant, Daniel Leonetti, was at the
15 relevant time, a Spokane County Sheriff's Department Corrections
16 Officer.

17 4. Individually named Defendant, Steven Skinner, was, at the
18 relevant time, a Spokane County Sheriff's Department Corrections
19 Officer.

20 5. The individually named defendants were residents of Spokane
21 County at all relevant times.

22 6. On May 1, 2004, the City of Spokane Police Department
23 responded to Mr. Petrolino's residence on a domestic violence call.

24 7. Mr. Petrolino was uncooperative during part of the

25 ²Findings of Fact Nos. 1-9 and 15-22 are set out as agreed,
26 undisputed facts in the November 9, 2010, final pretrial order.
(Ct. Rec. 168).

1 investigation.

2 8. He was eventually arrested without incident.

3 9. After the investigation, Mr. Petrolino was arrested by City
4 of Spokane Police Officers Scott Haney and James Christiansen and
5 transported to Spokane County Jail by Spokane Police Officer Scott
6 Haney.

7 10. At the Spokane County Jail, he was brought to the sally port
8 as is standard practice.

9 11. He was then transferred to corrections officers for
10 processing, which involves the completion of paperwork.

11 12. Mr. Petrolino stated that he indicated to the corrections
12 officers that he could not understand English well and needed a
13 translator. He additionally stated that he requested that the German
14 embassy be contacted.

15 13. The defendants, Officers Leonetti and Skinner, testified
16 they do not recall Mr. Petrolino making these assertions. In any
17 event, Corrections Officer Skinner stated that Mr. Petrolino was not
18 asked to read any documentation. Pursuant to normal practice, the
19 booking paperwork was read to him, and Mr. Petrolino needed to only
20 orally respond to the questions.

21 14. The exchange of information was taking place between Officer
22 Skinner and Mr. Petrolino. Officer Skinner and Officer Leonetti both
23 said they felt that Mr. Petrolino understood. Therefore, there was no
24 need for the services of a translator.

25 15. While in booking at the Spokane County Jail, Corrections
26 Officer Skinner provided Mr. Petrolino with a pen to sign the arrest

1 information sheet.

2 16. All inmates are required by Spokane County Jail to sign the
3 arrest information sheet.

4 17. If they do not sign the sheet, the officers will sign the
5 document refused.

6 18. Mr. Petrolino refused to sign his name.

7 19. Mr. Petrolino instead began to write, "I don't agree," on
8 the arrest information sheet.

9 20. Corrections Officer Skinner took Mr. Petrolino's failure to
10 sign the arrest information sheet as being uncooperative and came
11 around the booking desk and attempted to take Mr. Petrolino under
12 control to be transferred to a holding cell.

13 21. By the time Corrections Officer Skinner had walked around
14 the desk to obtain control of Mr. Petrolino's arm to take him to a
15 holding cell, Mr. Petrolino had begun walking away from him toward the
16 lobby.

17 22. Due to Mr. Petrolino's behavior, the correction officers
18 considered the pen a substantial threat and/or a weapon.

19 23. Officer Skinner testified that, as he came around the
20 booking desk, he saw Mr. Petrolino raise his hand above his head with
21 the pen not in the writing position but in a stabbing position.

22 24. It became apparent to Officer Skinner at this point that he
23 needed to control Mr. Petrolino. He grabbed the left arm of Mr.
24 Petrolino and said "drop the pen" several times.

25 25. Officer Leonetti testified he was 15 or 20 feet away, near
26 the jail cells.

1 26. Officer Leonetti said he was standing with his back to the
2 situation, turned around, and observed Mr. Petrolino with his right
3 hand above Mr. Petrolino's head with the pen in a manner consistent
4 with Officer Skinner's description.

5 27. Officer Leonetti came quickly to assist and/or protect a
6 fellow officer, Officer Skinner.

7 28. Officer Skinner stated that he used a knee strike on the
8 left side of Mr. Petrolino's abdomen, upper stomach area, seeking to
9 get control of Mr. Petrolino and took him down to the floor.

10 29. Officer Skinner stated that he does not recall Officer
11 Leonetti being involved in the take down, but he said he may have
12 been. He simply does not recall as he was concentrating on Mr.
13 Petrolino.

14 30. Officer Leonetti's testimony was that he attempted to
15 control the right hand and arm of Mr. Petrolino, and Mr. Petrolino
16 continued to resist.

17 31. Officer Leonetti grabbed Mr. Petrolino's right arm, used two
18 knee strikes to the torso or abdomen area of Mr. Petrolino, and
19 brought Mr. Petrolino to the floor.

20 32. On the floor, Mr. Petrolino's right arm was under his body
21 and a struggle ensued. Mr. Petrolino's right arm was eventually
22 brought behind his back, he was handcuffed, and he was taken to a
23 cell.

24 33. The pen, which was a stiff hard material, was not recovered.

25 34. While it is the Court's determination that there was some
26 language difficulty, it is also this Court's determination that Mr.

1 Petrolino was able to understand the basic requests being made.

2 35. It is the Court's belief that Mr. Petrolino probably felt
3 the whole situation did not make any sense, that he had to be arrested
4 because his wife had become hysterical during the domestic dispute.
5 He believed he was treated well at the scene. However, when he got to
6 the jail, he felt that things were not going appropriately and he
7 became quite agitated.

8 36. Both Officer Skinner and Officer Leonetti had gone through
9 training. They both had been to the State of Washington's corrections
10 academy where they were taught the various standards and procedures in
11 corrections. They both testified they received ongoing education that
12 entailed at least quarterly training.

13 37. Both Officer Skinner and Officer Leonetti testified that the
14 technique of using a knee strike in order to gain control of a person
15 who was in some way not following the requests of the officer or
16 resisting is an acceptable, trained practice.

17 38. The type and amount of force that was used by Officers
18 Skinner and Leonetti was consistent with the training they had
19 received.

20 **CONCLUSIONS OF LAW**

21 The Court makes the following conclusions of law:

22 1. The Fourth Amendment regulates interactions between an
23 arrestee and law enforcement officers, including corrections officers,
24 until such time as the arrestee appears before a judge and the judge
25 finds the arrest was supported by probable cause. *Pierce v. Multnomah*
26 *County*, 76 F.3d 1032, 1043 (9th Cir. 1996).

1 2. Given the absence of a judicial determination regarding
2 probable cause, Mr. Petrolino was not yet a pretrial detainee. As a
3 result, the corrections officers' treatment of him during booking is
4 governed by the Fourth Amendment.

5 3. Under the Fourth Amendment, the force used by a corrections
6 officer must be objectively reasonable given the totality of the
7 circumstances. *See, e.g., Lolli v. County of Orange*, 351 F.3d 410,
8 415 (9th Cir. 2003).

9 4. Determining whether force is objectively reasonable involves
10 a balancing of the competing interests. *Gregory v. County of Maui*,
11 523 F.3d 1103, 1106 (9th Cir. 2008). On the one hand, a reviewing
12 court must consider the nature and magnitude of the force to which the
13 arrestee was subjected. *See id.* On the other hand, a reviewing court
14 must consider the officer's need to use force to control the arrestee.
15 *See id.*

16 5. Reasonableness "must be judged from the perspective of a
17 reasonable officer on the scene, rather than with the 20/20 vision of
18 hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

19 6. In assessing reasonableness, courts and fact-finders must
20 allow for the fact an officer may have to decide whether to use force
21 in "circumstances that are tense, uncertain, and rapidly evolving[.]"
22 *Id.* at 397. Depending upon the circumstances, the officer may have to
23 make a "split-second judgment[] . . . about the amount of force that
24 is necessary[.]" *Id.* In doing so, he may misjudge the threat he
25 faces. He may use more force than he needs to protect himself or
26 others. The fact he uses more force than is necessary does not mean

1 he has violated the Fourth Amendment. Rather, the issue is whether he
2 acted reasonably despite making a mistaken assessment of the
3 situation. *Illinois v. Rodriguez*, 497 U.S. 177, 185-86, 110 S.Ct.
4 2793, 111 L.Ed.2d 148 (1990).

5 7. "If an officer reasonably, but mistakenly, believe[s] that a
6 suspect [i]s likely to fight back, . . . the officer . . . [is]
7 justified in using more force than in fact [i]s needed." *Saucier v.*
8 *Katz*, 533 U.S. 194, 205, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001),
9 *overruled on other grounds by Pearson v. Callahan*, ___ U.S. ___, 129
10 S.Ct. 808, 172 L.Ed.2d 565 (2009).

11 8. Officers Skinner and Leonetti needed to use force to disarm
12 and subdue Mr. Petrolino because:

13 (a) he attempted to walk away from Officer Skinner;

14 (b) he disobeyed the officers' commands;

15 (c) he held a pen in a manner that posed a threat to their
16 safety; and

17 (d) he would not voluntarily surrender the pen or submit to their
18 efforts to control him.

19 9. The nature and magnitude of the force that Officers Skinner
20 and Leonetti used was objectively reasonable when viewed in light of
21 the seriousness of the threat posed by Mr. Petrolino and the vigorous
22 manner in which he resisted them.

23 10. Neither Officer Skinner nor Officer Leonetti violated the
24 Fourth Amendment when interacting with Mr. Petrolino on or about May
25 2, 2004.

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In accordance with Rule 52(c), Defendants' Motion for Judgment as a Matter of Law (**Ct. Rec. 174**) is **GRANTED**. This cause is **DISMISSED**.

DATED this 17th day of November, 2010.

ORDER - 9